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Carlos Wiley and Karina Wiley, d/b/a Global Marketing and Sherry Watkins. Case 7-CA-37174

September 12, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND TRUESDALE

Upon a charge filed by Sherry Watkins, an individual, on May 3, 1995, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on June 9, 1995, against Carlos Wiley and Karina Wiley, d/b/a Global Marketing, the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On August 8, 1995 the General Counsel filed a Motion for Default Summary Judgment with the Board. On August 10, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 28, 1995, notified the Respondent that unless an answer were received by July 12, 1995, a Motion for Default Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent has been owned jointly by Carlos Wiley and Karina Wiley, part-
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ners, doing business as Global Marketing. At all material times, the Respondent, with an office and place of business in Flint, Michigan, has been engaged in providing telemarketing services. During the 12-month period ending May 31, 1995, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 for AT&T, an enterprise directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About April 3, 1995, the Respondent, by its agents Carlos Wiley and Karina Wiley, at its Flint facility, discharged Sherry Watkins, the Charging Party. The Respondent engaged in this conduct because the Charging Party engaged in concerted protected activities by demanding that the Respondent correct recurring problems with employee paychecks and to discourage employees from engaging in these or other concerted protected activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has unlawfully discharged Sherry Watkins, we shall order the Respondent to offer her immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed, and to make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to her unlawful discharge, and to notify her in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Carlos Wiley and Karina Wiley, d/b/a

GLOBAL MARKETING

Global Marketing, Flint, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against its employees because they engaged in protected concerted activities by demanding that Respondent correct recurring problems with employee paychecks and to discourage employees from engaging in these or other concerted protected activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Sherry Watkins immediate and full reinstatement to her former position or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed, and make her whole for any loss of earnings or other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this Decision and Order.

(b) Expunge from its files any and all references to her unlawful discharge, and notify her in writing that this has been done.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Flint, Michigan, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 12, 1995

William B. Gould IV, Chairman

Margaret A. Browning, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against our employees because they engaged in protected concerted activities by demanding that we correct recurring problems with employee paychecks and to discourage employees from engaging in these or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Sherry Watkins immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed, and make her whole, with in-

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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terest, for any loss of earnings or other benefits suffered as a result of the discrimination against her.

WE WILL remove from our files any and all references to her unlawful discharge, and WE WILL notify

her, in writing, that this has been done and that the discharge will not be used against her in any way.

CARLOS WILEY AND KARINA WILEY,
D/B/A GLOBAL MARKETING